

INSURANCE CODE

TITLE 12. OTHER COVERAGE

CHAPTER 3503. SURETY BONDS AND RELATED INSTRUMENTS

SUBCHAPTER A. CERTAIN REQUIRED OR PERMITTED OBLIGATIONS

Sec. 3503.001. DEFINITION. In this subchapter, "obligation" means a bond, undertaking, recognizance, guaranty, or other obligation that is by law or by a charter, ordinance, or rule of a municipality, board, body, organization, court, or public officer required or permitted to be made, given, tendered, or filed to guarantee the performance of an act, duty, or obligation or the refraining from an act.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3503.002. EXECUTION OF OBLIGATION BY SURETY COMPANY.

(a) A surety company authorized to engage in business in this state may execute an obligation.

(b) Except as provided by Section 3503.004 or 3503.005, the execution of an obligation by a surety company under Subsection (a) is in full compliance with each law, charter, ordinance, or rule that requires:

(1) the obligation to be executed by one or more sureties; or

(2) the executing sureties to possess any qualification, including the requirement that a surety be a resident, householder, or freeholder.

(c) Each municipality, board, body, organization, court, public officer, and head of department shall accept and treat an obligation executed by a surety company under Subsection (a) as fully complying with each law, charter, ordinance, or rule described by Subsection (b).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3503.003. DESIGNATION OF AGENT BY CORPORATE SURETY

REQUIRED. Notwithstanding Section [3503.002](#), in specifications by a municipality for work or supplies for which sealed bids are required, the municipality may require that a corporate surety tender designate, in a manner satisfactory to the municipality, an agent:

(1) who is a resident of the county in which the municipality is located; and

(2) to whom any required notices may be delivered and on whom process may be served in matters arising out of the suretyship.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 3, eff. April 1, 2007.

Sec. 3503.004. WRITTEN CERTIFICATION OF REINSURANCE AS CONDITION OF ACCEPTANCE OF OBLIGATION. (a) If an obligation is in an amount that exceeds 10 percent of the surety company's capital and surplus, the municipality, board, body, organization, court, or public officer may require, as a condition of accepting the obligation, written certification that the surety company has reinsured the portion of the risk that exceeds 10 percent of the surety company's capital and surplus with one or more reinsurers who are authorized, accredited, or trusted to engage in business in this state.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1147, Sec. 14.002, eff. September 1, 2011.

(c) On request, the department shall provide the amount of the allowed capital and surplus, as of the date of the last annual statutory financial statement, for a surety company or reinsurer authorized to engage in business in this state.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 3, eff. April 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. [1951](#)), Sec. 14.002, eff. September 1, 2011.

Sec. 3503.005. ADDITIONAL REQUIREMENTS FOR CERTAIN BONDS.

(a) A bond that is made, given, tendered, or filed under Chapter

[53](#), Property Code, or Chapter [2253](#), Government Code, may be executed only by a surety company that is authorized to write surety bonds in this state. If the amount of the bond exceeds \$100,000, the surety company must also:

(1) hold a certificate of authority from the United States secretary of the treasury to qualify as a surety on obligations permitted or required under federal law; or

(2) have obtained reinsurance for any liability in excess of \$1 million from a reinsurer that:

(A) is an authorized reinsurer in this state; or

(B) holds a certificate of authority from the United States secretary of the treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law.

(b) To determine whether the surety on the bond or the reinsurer holds a certificate of authority from the United States secretary of the treasury, a party may conclusively rely on the list published in the Federal Register by the United States Department of the Treasury, covering the date on which the bond was executed, of the companies holding certificates of authority as acceptable sureties on federal bonds and as acceptable reinsuring companies. A purchaser, insurer of title, or lender acquiring or insuring an interest in or title to real property may also conclusively rely on, and is protected by, a statement on a recorded bond or a sworn, recorded statement by the surety that refers to the specific recorded bond and states that, at the time the bond was executed, the surety complied with Subsection (a)(1) or (2).

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 3, eff. April 1, 2007.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1147 (H.B. [1951](#)), Sec. 14.001, eff. September 1, 2011.

SUBCHAPTER B. PROMPT PAYMENT OF CONSTRUCTION PAYMENT BONDS

The following section was amended by the 87th Legislature. Pending publication of the current statutes, see H.B. [2237](#), 87th Legislature, Regular Session, for amendments affecting the

following section.

Sec. 3503.051. DEFINITIONS. In this subchapter:

(1) "Claimant" means a person directly entitled to payment under a construction payment bond.

(2) "Construction payment bond" means a surety agreement or obligation issued to guarantee or assure payment by a principal obligor for work performed or materials supplied or specially fabricated for a public or private construction project.

(3) "Notice of claim" means a written notification by a claimant who makes a claim for payment from the surety company. The term does not include a routine statutory notice required by Section 53.056(b), 53.057, 53.058, 53.252(b), or 53.253, Property Code, or Section 2253.047, Government Code.

(4) "Surety company" means an authorized surety or guaranty company that executes and delivers a construction payment bond as a surety for a principal obligor.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3503.052. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter shall be construed to encourage prompt payment of just claims made under construction payment bonds of surety companies. This subchapter does not foreclose any other remedy available to a claimant by law or contract.

(b) This subchapter may not be construed to:

(1) create a private cause of action;

(2) be a precondition to judicially enforcing an obligation under a construction payment bond;

(3) diminish any other obligation of a surety company that exists by law; or

(4) prohibit a surety company from asserting a defense against a construction payment bond claim in a proceeding to enforce a claim.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3503.053. CERTAIN TERMS VOID. A term contained in a

construction payment bond that is inconsistent with this subchapter is void.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 3, eff. April 1, 2007.

Sec. 3503.054. NOTICE OF CLAIM; ACKNOWLEDGMENT AND INVESTIGATION. (a) A surety company that issues a construction payment bond shall, not later than the 15th day after the date of receipt of notice of claim under the bond:

(1) acknowledge receipt of the claim;

(2) begin any review or investigation necessary to determine whether the surety company is obligated to satisfy the claim under the bond; and

(3) request from the claimant each document, item of information, accounting, statement, or form that the surety company reasonably believes, at that time, will be required from the claimant.

(b) If a construction payment bond provides an address to which a notice of claim under the bond should be submitted, the notice is effective on the date the notice is received at that address.

(c) This subchapter does not exempt a claimant from complying with any applicable statutory or contractual notice requirement.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 3, eff. April 1, 2007.

Sec. 3503.055. NOTICE OF ACCEPTANCE OR REJECTION OF CLAIM.

(a) Except as provided by Subsection (c), a surety company shall notify a claimant in writing of the acceptance or rejection of a claim not later than the 30th day after the date the company receives all documents, items of information, accountings, statements, and forms requested by the company under Section [3503.054](#).

(b) If the surety company rejects all or part of the claim, the notice required by Subsection (a) must state in specific terms the reasons for the rejection that are known by the company at the

time of the rejection.

(c) If the surety company is unable to accept or reject the claim within the period specified by Subsection (a), the company, in that same period, shall notify the claimant in writing that the company is unable to accept or reject the claim. The notice provided under this subsection must:

(1) state the reasons for which the company needs additional time to accept or reject the claim; and

(2) include a request for any additional information the company reasonably needs to process the claim.

(d) Not later than the 30th day after the date a surety company notifies a claimant under Subsection (c), the company shall notify the claimant in writing of the acceptance or rejection of the claim. If the company rejects all or part of the claim, the company shall state in specific terms the reasons for the rejection that are known by the company at the time of the rejection.

(e) In addition to any other contractual or statutory basis for denying a claim, the surety company may reject all or part of a claim:

(1) that is the subject of a legitimate dispute between the principal obligor and the claimant; or

(2) for which the claimant has failed to provide supporting documents or information the company reasonably requested.

(f) The time limits provided by this section and Section [3503.054](#) may be varied by any statute requiring a construction payment bond.

(g) This section does not preclude a surety company from asserting any defense in an action brought by a claimant on a construction payment bond if the company makes a good faith effort to inform the claimant in accordance with this section of the reasons for rejecting all or part of the claim.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 3, eff. April 1, 2007.

Sec. 3503.056. PAYMENT OF CLAIM. (a) If a surety company notifies a claimant under Section [3503.055](#) that the company accepts

a claim or part of a claim, the company shall pay the claim not later than the 15th day after the date of the notice.

(b) If payment of the claim or part of the claim is conditioned on the execution of a document or performance of an act by the claimant, the surety company shall pay the claim not later than the seventh day after the date the company receives the executed document or evidence that the act has been performed.

(c) For purposes of this section, payment of a claim occurs when the surety company places the company's check or draft in the United States mail properly addressed to the claimant or the claimant's representative.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3503.057. RULES. The commissioner may adopt rules enforcing this subchapter in cases in which a surety company violates this subchapter as a general business practice.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

SUBCHAPTER C. OTHER BONDS

Sec. 3503.101. BAIL BOND CERTIFICATES. (a) In any year, an insurance company authorized to engage in fidelity and surety insurance business in this state may become surety in an amount not to exceed \$200 with respect to each bail bond certificate issued in that year by:

(1) an automobile club authorized to transact business in this state; or

(2) a truck and bus association incorporated in this state.

(b) The bail bond certificate must be a printed card or other certificate that:

(1) is issued by:

(A) an automobile club authorized to transact business within this state; or

(B) a truck and bus association incorporated in

this state;

(2) is issued to a member of the club or association and signed by the member of the club or association; and

(3) contains a printed statement that:

(A) a fidelity and surety company authorized to engage in business in this state guarantees the appearance of the member whose signature appears on the card or certificate; and

(B) if the member fails to appear in court at the time of trial, the fidelity and surety company will pay any fine or forfeiture imposed on the member in an amount not to exceed \$200.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. [2017](#)), Sec. 3, eff. April 1, 2007.

SUBCHAPTER D. SUIT ON CERTAIN BONDS OR OTHER OBLIGATIONS

Sec. 3503.151. VENUE OF SUIT ON CERTAIN BONDS OR OTHER OBLIGATIONS. (a) This section applies to:

(1) a bond or other obligation of an insurance company authorized to engage in business in this state and to act as surety and guarantor of the fidelity of employees, trustees, executors, administrators, guardians, or others appointed to, or assuming the performance of, any public or private trust under appointment of a court or tribunal, or under contract between private individuals or corporations; or

(2) a bond that may be required:

(A) to be filed in a judicial proceeding;

(B) to guarantee a contract or undertaking between:

(i) individuals;

(ii) private corporations;

(iii) individuals and corporations; or

(iv) individuals or private corporations and the state, a municipal corporation, or a county; or

(C) of a state, county, municipal, or district official, including a school district official.

(b) A proper court in the county in which a bond or other obligation described by Subsection (a) is filed has jurisdiction of

a suit instituted on the bond or obligation.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3503.152. RESIDENCE OF INSURANCE COMPANY. An insurance company described by Section 3503.151 is a resident of a county in which the company engages in business.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3503.153. SERVICE OF PROCESS. In a suit described by Section 3503.151, process shall be served in accordance with Sections 804.003, 804.101, 804.102, 804.103, 804.201, 804.202, 804.203(a), (c), and (d), and 804.204, as applicable.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3503.154. ACCEPTANCE OF SUBCHAPTER. The doing or performance of any business in any county is considered an acceptance of the provisions of this subchapter.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

SUBCHAPTER E. REGULATION OF SURETY COMPANY

Sec. 3503.201. MERGER OR CONSOLIDATION OF CERTAIN COMPANIES. When two or more companies authorized to write fidelity, guaranty, and surety insurance in this state merge or consolidate and, incident to the merger or consolidation, enter into a total reinsurance contract under which the merged or ceding company is dissolved and that company's assets are acquired and liabilities are assumed by the new or surviving company, the commissioner, on finding that the contracting companies have on deposit with the comptroller two or more deposits made for the same or similar purposes under former Article 7.03, repealed by Chapter 388, Acts of the 55th Legislature, Regular Session, 1957, or under Section 861.252, shall authorize the comptroller to:

(1) retain for a single purpose only the deposit of the greatest amount and value; and

(2) permit the new or surviving company, on proper showing that there is duplication of deposits and that the new or surviving company is the owner of those deposits, to withdraw a duplicate or excessive deposit.

Added by Acts 2005, 79th Leg., Ch. 727 (H.B. 2017), Sec. 3, eff. April 1, 2007.

Sec. 3503.202. UNEARNED PREMIUM RESERVE FOR BAIL BOND NOT REQUIRED. A surety company is not required to maintain an unearned premium reserve for a bail bond, as defined by Section 1704.001, Occupations Code, executed or delivered by the company.

Added by Acts 2013, 83rd Leg., R.S., Ch. 896 (H.B. 1047), Sec. 2, eff. September 1, 2013.

Sec. 3503.203. DIRECT WRITTEN PREMIUM CALCULATION. Direct written premium reported by a surety company in a financial statement filed with the department may be calculated excluding any premiums or service fees retained by a bail bond surety licensed under Chapter 1704, Occupations Code, or by a property and casualty agent in connection with the execution or delivery of a bail bond as defined by Section 1704.001, Occupations Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 896 (H.B. 1047), Sec. 2, eff. September 1, 2013.

Sec. 3503.204. DISCLOSURE REQUIREMENTS. A surety company that executes or delivers in this state a bail bond as defined by Section 1704.001, Occupations Code, shall disclose in the company's financial statement filed with the department the aggregate amount of:

(1) gross premium for bail bond business reported in the company's surety line of business;

(2) premium or service fees retained by the bail bond surety or agent; and

(3) premium for bail bond business received by the company, net of amounts retained by the bail bond surety or agent.

Added by Acts 2013, 83rd Leg., R.S., Ch. 896 (H.B. [1047](#)), Sec. 2,
eff. September 1, 2013.